

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

K. BABBITT,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C23-1245-SKV

ORDER REVERSING THE
COMMISSIONER'S DECISION

Plaintiff seeks review of the denial of her application for Disability Insurance Benefits (DIB). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff was born in 1971, AR 201, has some college education, AR 218, and has worked at a call center and as a massage therapist, AR 218. Plaintiff was last gainfully employed in 2020. AR 195.

1 In September 2020, Plaintiff applied for benefits, alleging disability as of March 31,
 2 2020. AR 185–86. Plaintiff’s applications were denied initially and on reconsideration, and
 3 Plaintiff requested a hearing. AR 88–94, 96–102. After the ALJ conducted a hearing on August
 4 23, 2022, the ALJ issued a decision finding Plaintiff not disabled. AR 12–33.

5 THE ALJ’S DECISION

6 Utilizing the five-step disability evaluation process,¹ the ALJ found:

7 **Step one:** Plaintiff has not engaged in substantial gainful activity since March 31, 2020,
 8 the alleged onset date.

9 **Step two:** Plaintiff has the following severe impairments: anxiety disorder; depressive
 10 disorder; and migraine disorder.

11 **Step three:** These impairments do not meet or equal the requirements of a listed
 12 impairment.²

13 **Residual Functional Capacity:** Plaintiff can perform a full range of work at all
 14 exertional levels but with the following non-exertional limitations: she is capable of
 15 simple routine task work; she can have superficial and occasional contact with the
 16 general public; she can work in the same room with coworkers but she should not work in
 17 coordination with coworkers; she can interact occasionally with supervisors; and she can
 18 adapt to simple, occasional workplace changes.

19 **Step four:** Plaintiff cannot perform past relevant work.

20 **Step five:** As there are jobs that exist in significant numbers in the national economy that
 21 Plaintiff can perform, Plaintiff is not disabled.

22 AR 17–28.

23 The Appeals Council denied Plaintiff’s request for review, making the ALJ’s decision the
 Commissioner’s final decision. AR 1–6. Plaintiff appealed the final decision of the
 Commissioner to this Court. Dkt. 1.

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¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P., App. 1.

LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social security benefits when the ALJ’s findings are based on harmful legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a general principle, an ALJ’s error may be deemed harmless where it is “inconsequential to the ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (cited sources omitted). The Court looks to “the record as a whole to determine whether the error alters the outcome of the case.” *Id.*

Substantial evidence is “more than a mere scintilla. It means - and means only - such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

DISCUSSION

Plaintiff argues the ALJ erred by discounting Plaintiff’s testimony and that of Plaintiff’s husband, as well as by rejecting certain medical opinion evidence. The Commissioner argues the ALJ’s decision is free of harmful legal error, supported by substantial evidence, and should be affirmed.

1 **A. The ALJ Erred in Discounting Plaintiff's Testimony.**

2 The ALJ found Plaintiff's testimony not credible on the ground that it was not supported
3 by objective findings in treatment notes from Plaintiff's routine appointments. AR 20–24. In so
4 finding, the ALJ summarized mental status examination findings from Plaintiff's telehealth
5 appointments between February 2020 and June 2022, noting Plaintiff's mood was almost always
6 dysphoric and/or anxious, but that Plaintiff was otherwise cooperative, pleasant, alert, and
7 oriented, with logical and goal directed thought process, normal memory and concentration, and
8 good insight and judgment. AR 20–23. From this, the ALJ concluded that “[t]hese often normal
9 findings and observations . . . do not corroborate the severity or frequency of the claimant's
10 allegations and suggest that she retains greater functional capacity than alleged.” AR 23. The
11 ALJ further noted that “while the claimant has alleged severe anxiety when around others, the
12 record suggests that [her] anxiety symptoms are not as severe as alleged as shown by, for
13 example, the claimant's ability to travel and her testimony that does not suggest a history of
14 significant disputes with coworkers (hearing).” AR 23.

15 Absent evidence of malingering, an ALJ must provide clear and convincing reasons to
16 discount a claimant's testimony. *Burrell v. Colvin*, 775 F.3d 1133, 1136–37 (9th Cir. 2014).

17 Plaintiff argues the ALJ failed to provide clear and convincing reasons for discounting
18 her testimony because the ALJ selectively cited normal mental status examination findings from
19 treatment notes while failing to acknowledge or address findings that corroborated Plaintiff's
20 symptom testimony. Dkt. 10 at 5–15. Plaintiff further argues that the ALJ erred by failing to
21 consider the fact that nearly all of the appointments described by the ALJ were conducted via
22 telehealth, meaning Plaintiff could do them from home where she felt more comfortable and less
23 symptomatic. *Id.* at 7 (citing AR 424–505, 506–42, 479–625, 626–43). The Court agrees.

1 The ALJ cited relatively normal mental status examination findings from treatment notes
2 spanning a multi-year period to support her finding that the severity of Plaintiff's reported
3 symptoms was out of proportion with the longitudinal record. AR 20–23. Those same treatment
4 notes, however, often contained findings that largely supported Plaintiff's testimony, which the
5 ALJ failed to acknowledge or address. *See, e.g.*, AR 471 (describing physical symptoms of
6 anxiety and an incident where Plaintiff had to pull over while driving to avoid a panic attack);
7 485 (reporting that Plaintiff only felt relief from anxiety when she was able to stay home and
8 limit contact with other people); 493 (discussing continued negative impacts of anxiety
9 symptoms); 495 (same); 499 (reporting a “meltdown,” but noting Plaintiff was able to de-
10 escalate the incident because she was at home); 512 (noting areas where Plaintiff appeared to be
11 anxiously picking her skin); 518 (reporting “brutal” anxiety the past few days and that Plaintiff
12 was in danger of “crashing” during appointment); 520 (rating anxiety as an “8 out of 10” and
13 describing how Plaintiff becomes very anxious when people come over); 537 (reporting anxiety
14 and depression are still “high” and that Plaintiff does not feel like medications are helping;
15 describing a “meltdown” where Plaintiff threw her phone as hard as she could).

16 Numerous other treatment notes likewise supported the severity of the symptoms alleged
17 by Plaintiff, which the ALJ also failed to acknowledge or address. *See, e.g.*, AR 441–45 (crisis
18 contact, suicidal thoughts); 453 (unable to cope with physical feelings of anxiety, including
19 nausea and tension); 461 (still highly anxious, worried about Covid, and experiencing increased
20 agoraphobia); 465 (discussing increased anxiety about family safety and describing “bipolar
21 meltdown” in which Plaintiff became enraged); 467 (describing panic attack after receiving
22 notice that insurance would be discontinued and ongoing struggles with anxiety); 479 (struggling
23 after three weeks back at work; describing anxiety attack; tearful on examination); 481

1 (struggling with anxiety and depressive symptoms, hypersomnia, recent episode of being out of
2 control, and unable to think rationally); 483 (ongoing anxious mood, using Klonopin to manage
3 excess anxiety); 508 (describing ongoing anxiety and depression; feeling “so anxious” and
4 experiencing increased anxiety going out of the house and seeing people); 510 (describing
5 incident where anxiety “skyrocket[ed]” and Plaintiff could not stop crying); 526 (ongoing surges
6 of anxiety); 528 (continued increase in anxiety and depression symptoms); AR 530 (mood
7 “spiraling”; experiencing increased anxiety and irritability; Plaintiff had to leave work early to
8 manage her anxiety and reported becoming angry at home and throwing and breaking things);
9 532 (reporting increased irritability, muscle tension, and face picking); 534 (same); 539
10 (describing mood as “terrible” and reporting need to increase medications to address heightened
11 anxiety; noting increased face picking); 585 (reporting recent increase in anxiety; anxiety
12 currently an “8 out of 10”); 636 (describing spike in anxiety symptoms after implementing
13 medication change; struggle with obsessive thoughts); 638 (describing need to cancel leisure
14 activity due to anxiety, panic, and obsessive thoughts); 664 (reporting need to leave family
15 Thanksgiving gathering early due to overstimulation).

16 While the ALJ noted that Plaintiff’s ability to travel undermined certain of her allegations
17 of debilitating anxiety, AR 23, this does not constitute substantial evidence in support of the
18 ALJ’s decision when considered against the voluminous record corroborating Plaintiff’s
19 allegations, which the ALJ failed to address. Moreover, while later treatment notes indicate an
20 improvement in Plaintiff’s symptoms, *see, e.g.*, AR 605, 610, 682, 700, 724, 730, the ALJ did
21 not discuss this improvement or discount Plaintiff’s testimony on that basis. In reviewing the
22 ALJ’s decision, the Court must rely on the reasons articulated by the ALJ and may not fashion its
23 own reasons to affirm. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).

1 Thus, by only relying on portions of treatment notes that supported finding Plaintiff not
2 disabled and failing to discuss or address treatment notes that corroborated Plaintiff's allegations,
3 the ALJ erred in discounting Plaintiff's testimony.

4 **B. The ALJ Erred in Discounting Lay Witness Testimony.**

5 Plaintiff's husband submitted a third-party adult function report indicating Plaintiff
6 experienced episodes where she became "irritable, angry, emotional, withdrawn, depressed,
7 [and] weak[,]" AR 249, and that these episodes would cause her to "sweat, shake, and become
8 irrational[,] . . . retreat into a room and not want to come out, or just want to go to sleep[,]" AR
9 248. As with Plaintiff's testimony, the ALJ discounted these statements based on their
10 inconsistency with the mental status examination findings in the longitudinal record. AR 26.
11 Because the Court finds that the ALJ erred in discounting Plaintiff's testimony on this ground, it
12 likewise finds that the ALJ erred in discounting Plaintiff's husband's statements on this ground.

13 **C. The ALJ Erred in Rejecting Medical Opinion Evidence.**

14 In finding Plaintiff not disabled, the ALJ considered opinions from Dr. Vincent Gollogly,
15 Ph.D., a state medical consultant, and Danielle Waldron, A.R.N.P., a treating provider. Dr.
16 Gollogly opined that Plaintiff was "capable of performing simple routine tasks" over the course
17 of a normal work week, but that she may miss days of work "intermittently" due to
18 psychological symptoms. AR 80. A.R.N.P. Waldron opined that Plaintiff had marked
19 limitations in the "B" criteria, would be off task twenty-five percent of the time due to her
20 symptoms, and would be absent from work once a week. AR 543–49. The ALJ found both
21 opinions unpersuasive on the ground that they were "out of proportion to the longitudinal
22 record." AR 25 (citing AR 509, 521, 537, 593, 686).

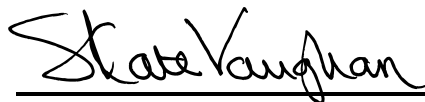
1 Under regulations applicable to this case, the ALJ is required to articulate the
2 persuasiveness of each medical opinion, specifically with respect to whether the opinions are
3 supported and consistent with the record. 20 C.F.R. § 404.1520c(a)-(c). An ALJ's consistency
4 and supportability findings must be supported by substantial evidence. *See Woods v. Kijakazi*,
5 32 F.4th 785, 792 (9th Cir. 2022).

6 Plaintiff argues the ALJ erred in rejecting both opinions because, in finding them
7 inconsistent with the longitudinal record, the ALJ failed to acknowledge the abnormalities and
8 difficulties described in the record that supported both opinions. Dkt. 10 at 16–17. The Court
9 agrees. As with Plaintiff's testimony, in discounting the medical opinion evidence, the ALJ
10 failed to acknowledge or address the abnormal findings contained in the record that supported
11 both opinions, and instead focused solely on Plaintiff's relatively normal mental status
12 examination findings. This was in error. Because the ALJ failed to consider contrary evidence,
13 her decision is not supported by substantial evidence.

14 CONCLUSION

15 For the reasons set forth above, the Commissioner's final decision is **REVERSED** and
16 this case is **REMANDED** for further administrative proceedings under sentence four of 42
17 U.S.C. § 405(g). On remand, the ALJ should reevaluate Plaintiff's testimony and the lay witness
18 evidence, reevaluate the medical opinions of Dr. Vincent Gollogly, Ph.D., and Danielle Waldron,
19 A.R.N.P, develop the record as needed, and proceed to the remaining steps of the disability
20 evaluation process as appropriate.

21 Dated this 20th day of February, 2024.

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S. KATE VAUGHAN
United States Magistrate Judge